

U.S.S.N. 10/028,795
Amendment Dated: December 5, 2005
Reply to Office Action dated September 8, 2005

Page 8 of 10

REMARKS

We thank the Examiner for his efforts to date, and for the allowance of claims 1-5 and 9-21 and the indication of allowability for claims 7-8. Claim 7 has been rewritten in independent form, including the limitations of claim 6. Accordingly claims 7 and 8 should now be allowable.

New claim 23 has been added, which depends from claim 6.

Currently, Claim is 22 rejected under 35 U.S.C 101 for lack of subject matter, and claims 6 and 22 are rejected under 35 U.S.C 102(e) as being anticipated by Chandra et. al (U.S. Patent 6, 457, 047).

Regarding the 35 U.S.C 101 non-statutory rejection, this rejection is traversed as follows. The rejection states that : "It is true that an article of manufacture and a machine-readable storage medium is a statutory category of the invention (2107.01 of MPEP), however if the specification defines this machine-readable storage medium as a data signal or a carrier wave, this machine-readable storage medium is also intangible media which is a non-statutory subject matter".

In response, we note that the specification does not define the machine-readable media to include a data signal or carrier wave. Indeed, the undersigned conducted a word search and the terms "data signal" or "carrier wave" were not found in the specification. Accordingly the claim does recite statutory subject matter, and withdrawal of the rejection is requested.

Turning now to the 35 U.S.C 102(e) rejection, the rejection is traversed as Chandra does not teach or suggest the invention as claimed in claim 6 which for convenience purposes is set out below:

6. (Previously Presented) A method of positioning data in a data network, the data network having a main server and at least one additional data server, the data network having a plurality of end users, the method including the steps of:

(a) selecting a first data server from the at least one additional data server based on specific predetermined criteria;

U.S.S.N. 10/028,795
Amendment Dated: December 5, 2005
Reply to Office Action dated September 8, 2005

Page 9 of 10

- (b) sending specific data from the main server to said first data server;
- (c) receiving at the main server a first request for the specific data, the first request being sent by an end user to the main server;
- (d) selecting the first data server as being suitable for providing the specific data requested by the end user; and
- (e) sending instructions to the end user to request the specific data from the first data server.

Without limiting the generality of the foregoing, as previously submitted, the Chandra reference differs from the claimed invention as the Chandra reference relates to determining where, within the network an *application* that can satisfy a request resides in cache, and does not teach or suggest actively positioning *data* at data servers based on criteria (which, for example includes the demand for specific data proximate to the data servers).

Furthermore, and without limiting the generality of the foregoing, Chandra does not teach or suggest "sending specific data *from the main server to said first data server*" (emphasis added). The rejection refers 44 in Figure 2, and then the detailed description, almost in its entirety, for this element. However, element 44 is described as "The *master application server* may then send the search page form to the user in step 44" (emphasis added) at column 4, line 56-58. Thus this element of the claim is not taught by Chandra as the main server in Chandra does not send the specific data to the first data server as claimed, but rather to the user.

Moreover, applicant asserts that Chandra also does not teach or suggest the claim limitation: "(e) sending instructions to the end user to request the specific data from the first data server." Once again the rejection refers 44 in Figure 2, and then the detailed description, almost in its entirety, for this element. Once again this does not teach the claimed element. Sending a search page to the user does not teach sending instructions to the end user to request the specific data from the first data server. Moreover, the application cache server number 48 in figure 2 of Chandra actually serves the cached result (item 52 in Figure 2) to the user. Thus the *user* is not instructed to request the specific data from the first data server as claimed.

Consequently, claim 6 is allowable, and withdrawal of the rejection is requested.

U.S.S.N. 10/028,795
Amendment Dated: December 5, 2005
Reply to Office Action dated September 8, 2005

Page 10 of 10

Certainly claim 23, which depends from claim 6 is allowable as Chandra certainly does not disclose selecting a first data server depending on specific predetermined criteria which includes the demand for said specific data proximate to said first data server.

Consequently, withdrawal of the rejections to claims 6 and 22 and allowance of all claims in the application is therefore requested.

No fee is believed due for this submission. However, Applicant authorizes the Commissioner to debit any required fee from Deposit Account No. 501593, in the name of Borden Ladner Gervais LLP. The Commissioner is further authorized to debit any additional amount required, and to credit any overpayment to the above-noted deposit account. Applicant submits that the application is now in condition for allowance, and favorable action to that end is respectfully requested.

Respectfully submitted,

Brad R. BLACK et al

By:


Jeff Measures

Reg. No. 40,272

Borden Ladner Gervais LLP
World Exchange Plaza
100 Queen Street, Suite 1100
Ottawa, ON K1P 1J9
CANADA

Tel: (613) 237-5160

Fax: (613) 787-3558

E-mail: ipinfo@blgcanada.com

JMM/dbm